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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re C.M. et al., Persons Coming Under  
the Juvenile Court Law.

C043238

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

(Super. Ct. Nos.  
JD218164, JD218165)

Plaintiff and Respondent,

v.

SUSAN S.,

Defendant and Appellant.

Appellant, the mother of the minors, appeals from juvenile court orders entered after a review hearing continuing the minors as dependent children and directing the Sacramento County Department of Health and Human Services (DHHS) to arrange regular visitation between appellant and the minors. (Welf. &

Inst. Code, §§ 366.21, subd. (e), 395.)<sup>1</sup> Appellant contends she did not receive reasonable reunification services because DHHS failed to arrange visitation between appellant and the minors. We remand this case and direct the juvenile court to render a proper order pertaining to visitation.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On May 8, 2002, DHHS filed original juvenile dependency petitions pursuant to section 300 on behalf of appellant's 12-year-old son and 15-year-old daughter. Those petitions alleged the minors were at a substantial risk of suffering serious physical harm because appellant suffered from psychiatric and substance abuse problems. The petitions also alleged appellant and the minors' father had a lengthy history of domestic violence.

On July 17, 2002, the juvenile court sustained the petitions as amended, adjudged the minors dependent children, and ordered appellant to comply with the requirements of a reunification plan. The court also granted appellant visitation with the minors "as arranged and directed by [DHHS], supervised, and the time, place, manner and frequency is [at] the discretion of [DHHS] as is consistent with the well-being of the children, the children's wishes to be taken into consideration as well as the recommendation of the therapists."

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

On December 10, 2002, appellant filed petitions for modification pursuant to section 388, asking the juvenile court to compel DHHS to arrange visits between appellant and the minors. According to those petitions, no visits had been scheduled by DHHS.

According to a January 2003 social worker's report, the minors "consistently expressed their wishes not to participate in any type of contact with [appellant]." The social worker also stated she had "discussed the issue of visitation during the monthly visits with the children and with the children's therapist. The therapist stated that she does not think that visiting with [appellant] would be in the children's best interest. Further, the therapist stated that the children are experiencing great degrees of anxiety due to their past experiences and the adjustments they are asked to make."

At the January 22, 2003, combined six-month review hearing and hearing on the petitions for modification, which is the subject of this appeal, counsel for appellant argued that because DHHS had failed to arrange any visitation, it had failed to provide appellant with reasonable reunification services. Counsel asked the juvenile court to order DHHS to implement visitation and extend the period of reunification services by six months.

At the conclusion of the hearing, the juvenile court found that DHHS had provided reasonable reunification services to appellant. The court again ordered DHHS to arrange for regular visitation between appellant and the minors, stating in part

that "I am not going to institute a no contact order in this case. I do not believe that to be appropriate." The court also ordered DHHS to consider the wishes of the minors and the recommendations of the children's therapists. The court directed DHHS to "actively and continuingly assess written contact and telephone contact for the children with [appellant] if actual face-to-face visitation continues to be deemed premature. The children shall not be given the sole veto power over visits."<sup>2</sup>

### **DISCUSSION**

Appellant contends she was denied reasonable reunification services because DHHS failed to arrange for visitation with the minors as ordered by the juvenile court. Therefore, appellant argues, the court's finding that DHHS offered her reasonable reunification services was an abuse of discretion because it was not supported by substantial evidence. Noting the inconsistency of an order that granted visitation with the minors but also suggested such visits might be premature, appellant urges a remand of this matter is appropriate.

In a dependency proceeding, the juvenile court has the power and responsibility to determine visitation between a parent and the dependent child. (§ 362.1; *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1373-1374 (*Moriah T.*); *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 754-755.) The court may

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<sup>2</sup> The clerk's transcript reflects that the juvenile court denied appellant's petitions for modification as moot.

delegate to an agency such details of visitation as time, place, and manner. (*In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1234-1237.) The court has broad discretion to make its visitation decisions. Absent a showing of a clear abuse of that discretion, the reviewing court will not disturb the juvenile court's determination. (*In re Megan B.* (1991) 235 Cal.App.3d 942, 953.)

In *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1476 (*Donovan J.*), the visitation order provided in part that the parent there had "no visitation rights without permission of minors' therapists." In holding the order an unlawful delegation of judicial authority, the court stated in part as follows: "[The order] neither requires that the therapists manage visitation ordered by the court, nor sets criteria (such as satisfactory progress) to inform the therapists when visitation is appropriate. Instead it conditions visitation on the children's therapists' sole discretion. Under this order, the therapists, not the court, have unlimited discretion to decide whether visitation is appropriate. That is an improper delegation of judicial power. Although a court may base its determination of the appropriateness of visitation on input from therapists, it is the court's duty to make the actual determination." (*Id.* at pp. 1477-1478.)

The *Donnovan J.* court noted that delegation of power to a private therapist, as opposed to a public agency, "raises additional concerns. Unlike a child protective services agency, a private therapist is not statutorily bound to 'act as a

cooperative arm of the juvenile court.' [Citation.] A private therapist is not accountable to the court in the same manner as a child protective services agency." (*Donnovan J., supra*, 58 Cal.App.4th at p. 1476; see also *In re Julie M.* (1999) 69 Cal.App.4th 41, 48-49 (*Julie M.*)).

Our Supreme Court has considered the delegation of judicial authority to a private therapist regarding visitation. In *In re Chantal S.* (1996) 13 Cal.4th 196, 202 (*Chantal S.*), the visitation order at issue stated, in part: "'Visitation . . . for father . . . to be facilitated by [Chantal's] therapist . . . . 2. Father must attend therapy regularly and make satisfactory progress for a time before any visits as determined by his therapist.'" The Supreme Court analyzed whether the requirements that visitation be "'facilitated'" by Chantal's therapist and that the therapist determine when "'satisfactory progress'" was achieved constituted an improper delegation of judicial authority. The court concluded the order was proper as it did not vest the therapist with absolute discretion to determine whether visitation would occur. (*Id.* at pp. 213-214.)

In this case, the somewhat equivocal order granting visitation to appellant is subject to several interpretations. We could construe it as a grant of visitation, subject only to conditions not identified that could be imposed by DHHS based on recommendations of the therapist and the wishes of the minors. Alternatively, the order may be read to empower DHHS to determine whether visitation would be permitted at all. The

latter interpretation would amount to an unlawful delegation of judicial authority and could not stand. (*Chantal S.*, *supra*, 13 Cal.4th at pp. 213-214; *Moriah T.*, *supra*, 23 Cal.App.4th at p. 1374.) As appellant asserts, on its face the order appears to be “internally inconsistent.”

As in *Donnovan J.*, *supra*, 58 Cal.App.4th at page 1478, here “[t]he order does not reveal whether visitation is appropriate or what conditions are necessary to ensure the safety of the children.” While the order grants visitation in theory, the reality is that no visitation has been permitted. This outcome results from decisions made by therapists and DHHS without guidance from the court. Accordingly, we must remand this case to the juvenile court so that, in exercising its discretion, the court may clarify its intent whether to grant appellant visitation and, if so, to render an order consistent with case law.

We are mindful of the difficulties existing in a case where, as here, older minors are refusing to visit with a parent who wishes earnestly to maintain contact with those minors as part of her reunification efforts. Even under such admittedly problematical circumstances, it is incumbent on the juvenile court to discharge its responsibility, working with DHHS as well as other parties, to afford parents an opportunity to visit with their children. The juvenile court also may want to consider, under the circumstances presented and given current available information, whether continued visitation may be detrimental to the minors. (Cf. *Julie M.*, *supra*, 69 Cal.App.4th at p. 50.)

Whatever it determines, the court should make its findings and render an internally consistent order regarding visitation pursuant to the guidelines contained in the cases we have reviewed in this opinion.

**DISPOSITION**

Because the visitation order is ambiguous, the juvenile court erred in finding DHHS had provided reasonable reunification services to appellant. The visitation order is reversed, and the case is remanded for further proceedings consistent with this opinion.

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RAYE, J.

We concur:

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SCOTLAND, P.J.

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MORRISON, J.